

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 16-1613 JB

ANTHONY RAY BACA, a.k.a. "Pup";
CHRISTOPHER GARCIA; MANUEL
JACOB ARMIJO, a.k.a. "Big Jake";
FREDERICO MUNOZ, a.k.a. "Playboy";
SERGIO LOYA RODRIGUEZ, a.k.a.
"Churro"; MANUEL BENITO, a.k.a.
"Panther"; VINCENT GARDUÑO, a.k.a.
"Fatal"; MANDEL LON PARKER, a.k.a.
"Chuco"; DANIEL ARCHULETA, a.k.a.
"Smurf"; DANIEL SANCHEZ, a.k.a.
"Dan Dan"; ANTHONY CORDOVA,
a.k.a. "Antone," and ARTURO
ARNULFO GARCIA, a.k.a. "Shotgun,"

Defendants.

MEMORANDUM OPINION AND ORDER

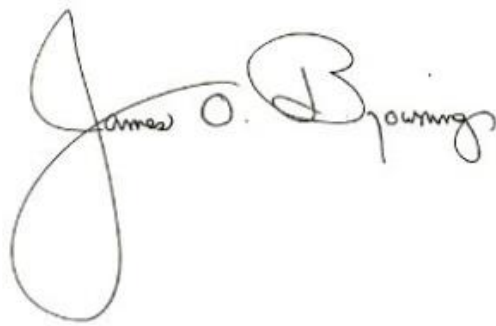
THIS MATTER comes before the Court on Defendant Anthony Cordova's objection to the introduction of jail calls between him and his attorney, Ms. Marcia A. Morrissey, on grounds of attorney-client privilege. See Draft Transcript of Trial Day 7 at 349:14-16 (taken July 17, 2018)(Morrissey)("Tr.").¹ Plaintiff United States of America contends that the attorney-client privilege does not apply, because the telephone calls were "subject to monitoring and recording." Tr. at 349:24-25 (Castellano). Cordova did not make the telephone calls on the attorney line. See

¹The Court's citations to the transcript of the trial refer to the court reporter's original, unedited version. Any final transcript may contain slightly different page and/or line numbers.

Tr. at 349:21-22 (Castellano). Ms. Morrissey did not, however, hear the preamble warning that the call was recorded on the jail telephone line from which Cordova made the calls, see Tr. at 349:21-350:5 (Morrissey), because Cordova made the calls to his wife, who then began a three-way call with Ms. Morrissey, see Tr. at 350:2-5 (Morrissey).

The Court concludes that, despite Ms. Morrissey's lack of knowledge about the preamble, the attorney-client privilege does not apply. "The attorney-client privilege is lost if the client discloses the substance of an otherwise privileged communication to a third party." United States v. Ryans, 903 F.2d 731, 741 n.13 (10th Cir. 1990)(citing United States v. Bump, 605 F.2d 548 (10th Cir. 1979); United States v. Jones, 696 F.2d 1069 (4th Cir. 1982)); United States v. Bump, 605 F.2d at 551 ("Even if the privilege exists it is waived when the client voluntarily reveals the information to another or his attorney does so with his consent."). "This is true even if the disclosure is inadvertent." United States v. Ryans, 903 F.2d at 741 n.13 (citing In re Grand Jury Proceedings, 727 F.2d 1352, 1356 (4th Cir. 1984); Weil v. Inv./Indicators, Res. & Mgmt., Inc., 647 F.2d 18, 24 (9th Cir. 1981); In re Grand Jury Investigation, 604 F.2d 672, 675 (D.C. Cir. 1979); 8 Wigmore on Evidence § 2327 at 635 (McNaughton rev. 1961 & 1987 Supp.)). Cordova -- the client -- heard the preamble, and should have known that the calls were monitored and recorded. Moreover, Cordova's subjective intent regarding whether to disclose the information and Ms. Morrissey's misconception that the calls were confidential are irrelevant. Cordova disclosed the information. Accordingly, the Court denies Cordova's objection.

IT IS ORDERED that Defendant Anthony Cordova's objection to the introduction of jail calls between him and his attorney, Marcia A. Morrissey, on grounds of attorney-client privilege is overruled.

A handwritten signature in black ink, appearing to read "James O. Downing". The signature is stylized with a large loop at the beginning and a long, sweeping underline.



UNITED STATES DISTRICT JUDGE

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Acting Under Authority Conferred by 28 U.S.C. § 515
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